

15.2 THE RTI ACT, 2005

The Right to Information Act, 2005 provides a remedy for effectuating the right to information recognised under Article 19 of the Constitution of India. The main objectives of this-Act are :

- (i) To provide access to information to the citizens who desire to have it.
- (ii) To promote transparency and accountability in the working of every public authority.
- (iii) To hold government and their instrumentalities accountable to the public at large.

The salient features of the Act are :

- (i) It extends to the whole of India except Jammu and Kashmir.
 - (ii) It is applicable to public authorities.
 - (iii) All citizens have the right to information who desire it, subject to limitation provided in the Act.
 - (iv) The Act has made a provision to appoint Public Information Officers and Assistant Public Information Officers, These officers are responsible to deal with the requests for information. Also, these officers are to act as facilitators to the people seeking information.
 - (v) The Act has laid down a schedule of fees to be paid by the applicant desiring to have a particular information. The amount of fee depends on the nature of information which an applicant is seeking.
 - (vi) The Act has exempted certain information from the purview of the Act, Sections 8 and 9 of the Act deal with such type of information.
 - (vii) Schedule II enumerates certain intelligence and security governmental agencies. These agencies are exempted from the purview of the Act. subject to certain conditions.
1. Information
 2. Public Authority
 3. Records
 4. Right to Information
 5. Third Party

1. Information : It means any material in any form, including records, documents, memos, e-mail, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

2. Public Authority : It means any authority or body or institution of self-government established constituted :

- (a) by or under the Constitution of India.
- (b) by any other law made by Parliament.
- (c) by any other law made by State Legislatures.
- (d) by notification issued or order made by the appropriate government, and includes any :
 - (i) body owned, controlled or substantially financed ;
 - (ii) non-government organisation substantially financed.

In (d) above the organisation may be being financed directly or indirectly by funds provided by the government.

3. Record : It includes any :

- (a) document, manuscript and file;
- (b) microfilm, microfiche, and facsimile copy of a document;

- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device.

4. Right to Information : It means the right to information accessible under this Act which is held by or under the control of any public authority. It also “includes the right to :

- (a) taking notes, extracts, or certified copies of documents or records;
- (b) inspection of work, documents, records;
- (c) taking certified samples of material;
- (d) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

5. Third Party : It means a person other than the citizen making a request for information. It also includes a public authority.

The obligations of a public authority as provided in Section 4 of the Act. Section 4 makes it obligatory on every authority to maintain records and publish manuals, rules regulation, instructions etc. in its possession as prescribed under the Act.

Every public authority was required to publish within 120 days of the enactment of this Act, the follows :

- (i) The particulars of its organisation, functions and duties;
- (ii) The powers and duties of its officers and employees;
- (iii) The procedure followed in its decision-making process, including channels of supervision and accountability;
- (iv) The norms set by it for the discharge of its functions;
- (v) The rules, regulations, instructions, manuals and records used by its employees for discharging its function;
- (vi) A statements of the categories of documents held by it or under its control;
- (vii) The particulars of any arrangement that exists for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof;
- (viii) A statement of the boards councils committees and other bodies consisting of two or more persons constituted by it as its part or for the purpose of its advice. Also, whether meetings of those boards, etc. are open to the public, or the minutes of such meetings are accessible to public.
- (ix) A directory of its officers and employees;
- (x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its “Regulations;
- (xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) The manner of execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) The particulars of recipients of concessions, permits or authorisations granted;
- (xiv) The details in respect of the information, available to or held by it; reduced in an electronic form;
- (xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) The names, designations and other particulars of the Public Information Officers; and
- (xvii) Such other information as may be prescribed.

The public authorities are required to update these publications every year there after.

The purpose of this provision in the Act is to make it responsible every public authority to constantly endeavour to take steps to provide as much information of its own accord (even without being asked by the members of the public) to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

The public authorities are under an obligation to disseminate the above information, widely and in such form and manner which is easily accessible to the public. Also, all materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in the local area. Further, the information should be easily accessible, to the extent possible, in electronic format with the Central Public Information Officer or State Public Information Officer as the case may be. The information shall be made available free or at such cost of the medium or the print cost price or may be prescribed.

Explanation to Section 4 provides that 'disseminated' means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of officer of any public authority.

Further, Section 4 provides that the public authority should publish all relevant facts while formulating important policies or announcing the decisions which affect public.

Furthermore, public authorities are duty bound to provide reasons for its administrative or quasi-judicial decisions to affected persons.

The provision as regard designation of Public Information Officers: (PIO) by the public authorities. Section 5 provides that every public authority shall—

1. Designate in all administrative units or offices Central or State Public Information Officers to provide information to persons who have made a request for the information.
2. Designate at each sub-divisional level or sub-district level Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers or Senior Officer specified in Section 19(1) or the Central Information Commission or the State Information Commission, as the case may be.
3. Every Central Public Information Officer or State Public Information Officer shall deal with requests from persons seeking information. Also, he shall render reasonable assistance to the persons seeking the information.
4. The Central Public Information Officer or State Public Information Officer may seek the assistance of any other officer as he considers it necessary for the proper discharge of his duties.
5. Any officer, whose assistance has been sought under (4) above, shall render all assistance to the Central (or State) Public Information Officer, seeking his assistance.

Further, for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central (or State) Public Information Officer.

The provisions as regards making of request for obtaining information, and of disposal of the request.

Sections 6 and 7 deal with these provisions. Section 6 makes a provision as to how to the manner in which request may be made by a citizen to the authority for obtaining the information.

The request for information is to be made in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made. The application must accompany the prescribed fee. The application is to be made to (a) the Central (State) Public Information Officer of the concerned public authority; (b) the Central (or State) Assistant Public Information Officer. The application must specify the particulars of the information sought by the applicant.

In case, the applicant cannot make the request in writing, the CPIO or SPIO shall render all reasonable assistance to the person making the request orally to produce the same in writing.

No reasons are to be given by the person making the request for information or any other personal details except those that may be necessary for contacting him.

Further, the Section provides for transferring the request to the other concerned public authority who may possess the information. However, the transfer of this request by the receiving authority to the concerned authority must be made as soon as practicable but in no case later than five days from the date of receipt of the application.

Section 7 deals with the matter of disposal of the request for information. The CPIO (or SPIO) has either to provide the information on payment of such prescribed fee or reject the request within 30 days of the receipt of the request.

However, if the information sought concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request.

If no decision is given within the period mentioned above, the request shall be deemed to have been refused.

The person making the request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified for response (i.e., 30 days or 48 hours).

Before giving the response to the request for information, the Public authority shall take into consideration the representations made by a third party under Section 11. In such a case (i.e., where the interests of a third party are involved), then time limit of 30 days will be increased by 10 days (i.e., the time given to the third party to make representation).

Where a request to provide information has been rejected, then the public authority shall communicate to the person making the request :

- (a) the reasons for such rejection,
- (b) the period within which an appeal against such rejection may be preferred, and
- (c) the particulars of the appellate authority.

Further, Section 7 provides that the information shall ordinarily be provided in the form in which it is sought. However, if doing so, would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question, then the information need not be provided in that format.

The categories of information which have been exempted from disclosure under the Act.

Section 8 enumerates these categories. The provisions of this Section are summarised below. Also Sections 9 and 10 need to be considered here.

1. There shall be no obligation to give any citizen information :

- (i) Where disclosure prejudicially effects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.
- (ii) Where information has been expressly forbidden by any court or tribunal or the disclosure of which may constitute a contempt of court.
- (iii) Where disclosure would cause a breach of privilege of Parliament or the State Legislature.
- (iv) Where the disclosure of information (including commercial confidence, trade secrets or intellectual property) would harm the competitive position of a third party, unless the larger public interest warrants the disclosure of such information.
- (v) Where the information available to a person is in his fiduciary relationship unless the larger public interest warrants the disclosure of such information.

- (vi) Where the information has been received from foreign governments, in confidence.
- (vii) Where the disclosure of the information endangers life or physical safety of any person or identifies confidential source of information or assistance.
- (viii) Where the information would impede the process of investigation or apprehension or prosecution of offenders.
- (ix) Where the information concerns Cabinet Papers, including records of deliberations of the Council of Ministers, Secretaries and other officers.

However, the decisions of Council of Ministers, the reasons there of, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and matter is complete, or over.

- (x) Where the information relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual.
2. Section 8 further provides that inspite of the exemptions permissible above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Section 9 empowers the Public Information Officers to reject a request for information where an infringement of a copyright subsisting a person would be involved.

Section 10 allows partial disclosure under certain situations. This Section provides that only that part of the record may be provided which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information.

Provision has been made by the Act as regards information or record which relates to or has been supplied by a third party.

Section 11 deals with this matter and is summarised below :

1. Where a public authority intends to disclose any information, which relates to or has been supplied authority shell, within five days from the receipt of the request, give a written notice to such third party of the request for information. The public authority shall invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed. The public authority shall keep in view the submission of the third party while taking a decision about disclosure of information.
In any case, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party, except in the case of trade or commercial secrets protected by law.
2. Where such a notice is given to a third party, then the third party shall within ten days from the receipt of the notice, be given the opportunity to make representation against the proposed disclosure.
3. In case the third party has been given an opportunity to make a representation, then the public authority shall make a decision as to whether or not to disclose the information. Also its decision shall be communicated to the third party.
4. The communication to the third party under (3) above shall include a statement that the third party is entitled to prefer an appeal under Section 19 against the decision.

Section 12 provides for the constitution of Central Information Commission (CIC). The CIC is to be constituted by the Central Government through a Gazette notification. This Commission consists of the Chief Information Commissioner and Central Information Commissioners not exceeding ten. These shall be appointed by the President of India on the recommendations of a committee consisting of the Prime Minister, who is the Chairman of the Committee; the header of Opposition in the Lok Sabha, and a Union Cabinet Minister to be nominated by the Prime Minister.

The Chief Information Commissioner and Central Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, Journalism, mass media or administration and governance.

The Chief Information Commissioner or the Central Information Commissioners shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or be connected with any political party or carryings on any business or pursuing any profession.

The general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner who shall be assisted by the Central Information Commissioners.

The Central Information Commission shall have its headquarters in Delhi. It may establish other offices in different parts of the country with the approval of the Central Government.

The Central Information Commission shall exercise its powers without being subjected to direction by any other authority.

Section 13 provides that the Chief Information Commissioner shall be appointed for a term of five years from the date he enters upon his office or till he attains the age of 65 years, whichever is earlier. He is not eligible for reappointment.

The salary of the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner. His total emoluments shall not be varied to his disadvantage during service.

Section 14 provides for removal of the Chief Information Commissioner or information Commissioner. The President may by order remove him from office if he is

- (a) adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or any Information Commissioner.

Subject to the above provisions, the Chief Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President has, on inquiry, reported that he ought on such ground be removed.

Further the President may suspend from office and, if deem necessary, prohibit also from attending the office during Inquiry the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court as above mentioned, until the President has passed orders on receipt of the report of the Supreme Court on such reference.

Furthermore, Section 14 provides as to when he shall be deemed to be guilty of misbehaviour. These are : (i) If he is, in any way, concerned or interested in any contract made by or on behalf of the Government. (ii) He participates in any way in the profit of the contract or in any benefit or emoluments arising therefrom, otherwise than as member and in common with the other members of an incorporated company.

The constitution powers and terms of office and removal from office of the State information Commissioner.

Sections 15 to 17 deal with these provisions.

The State Information Commission shall be constituted by the State Government through a Gazette Notification. The Commission consists of one State Chief Information Commissioner and not more than ten State Information Commissioners. These shall be appointed by the Governor on the recommendations of a committee consisting of the Chief Minister who is the Chairman of the committee. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.

The State Commission will exercise its powers without being subjected to any other authority. The headquarters of the State Information Commission shall be at such place as the State Government may specify. It may establish other offices in different parts of the State with the approval of the State Government.

The terms of office of the State Chief Information Commissioner and the State Information Commissioners are mentioned in Section 16. Their removal is provided for in Section 17. The provisions in Sections 16 and 17 are almost on the same lines as in Sections 13 and 14 concerning Central Chief Information Commissioner and the Central Information Commissioners.

The powers and functions of Information Commissions.

Section 18, in this regard, provides as follows :

1. It shall be the duty of the Information Commission to receive and inquire into a complaint from any person :
 - (a) who has not been able to submit an information request because a Public Information Commissioner has not been appointed;
 - (b) who has been refused information, the request for which was duly made;
 - (c) who has not receive any responses to his information request within the specified time limits.
 - (d) who thinks the fees charged are unreasonable;
 - (e) who thinks information given is incomplete or false or misleading; “and
 - (f) any other matter relating to obtaining or requesting access to records under this Act.
2. If the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.
3. The Commission, during the inquiry of any complaint under this Act, may examine any records which are under the control of the public authority, and no such records may be withheld from it on any grounds.

The different Appellate Authorities for which provision has been made in the Act.

Section 19 deals with appeals in the following ways :

1. Any person who does not receive a decision within the specified time or is aggrieved by a decision of the Public Information offices may file an appeal under the Act.

The first appeal to the officer senior in, rank to the Public Information Officer in the concerned public authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision can be made. However delay in filing, if any, may be condoned by the Appellate Authority if sufficient cause is shown.
2. A second appeal against the decision under (1) shall be within 90 days from the date on which the decision should have been made or was actually received, with the Central (or the State) Information Commission.

However, the Commission may admit the appeal after the expiry of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

3. Where an appeal is preferred Against an order made by Central (or State) Information Officer under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within 30 days from the date of the order.
 4. If the decision of the Central (or State) Information Officer against which an appeal is made relates to information of a third party, the Commission shall give a reasonable opportunity of being heard to that third party.
 5. The burden of proving that denial of information was justified lies with the Public Information Officer.
 6. The first appeal shall be disposed of within 30 days from the date of its receipt or within such extended period not exceeding a total of 45 days from the date of filing there of. The reasons for extending the period by 15 days must be recorded in writing.
 7. The decision of the Central (or State) Information Commission shall be binding.
 8. The Commission has the power, while giving its decision, to :
 - (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act;
 - (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
 - (c) impose any of the penalties provided under this Act; and
 - (d) reject the application.
 9. The Commission shall give a notice of its decision, including any right of appeal, to the complainant and the public authority.
 10. The Commission shall decide the appeal in accordance with the prescribed procedure.
- The provision relating to penalties prescribed under the Act.

Section 20 imposes penalty on a Public Information Officer for failing to provide information. He is liable to fine of Rs. 250 per day up to a maximum of Rs. 25,000 for the following :

- (i) not accepting an application for information;
- (ii) delaying information release without reasonable cause;
- (iii) malafidely denying information;
- (iv) knowingly giving incomplete, incorrect, misleading information;
- (v) destroying information that has been requested; and
- (vi) obstructing in furnishing of information in any manner.

The Information Commission (both the Central and the State) shall have the power to impose this penalty. They can do recommend disciplinary action for violation of the law against the public Information Officer for persistently failing to provide information without any reasonable cause within the specified time.